

811 KAR 2:185. Advance deposit account wagering.

RELATES TO: KRS 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.310, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(2) authorizes the Kentucky Horse Racing Commission to issue licenses to any person or entity that offers advance deposit account wagering to Kentucky residents. This administrative regulation establishes the license application procedures and requirements to offer advance deposit account wagering to Kentucky residents.

Section 1. Definitions. (1) "Account" means an account for advance deposit account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the advance deposit account wagering licensee.

(2) "Account holder" means an individual who successfully completed an application and for whom the advance deposit account wagering licensee has opened an account.

(3) "Advance deposit account wagering" is defined by KRS 230.210(1).

(4) "Advance deposit account wagering licensee" is defined by KRS 230.210(2).

(5) "Applicant" means an individual, person, or entity that has submitted an application for a license pursuant to this administrative regulation.

(6) "Association" is defined by KRS 230.210(5).

(7) "Confidential information" means:

(a) The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;

(b) The amount of money wagered by a particular account holder on any race or series of races;

(c) The account number and secure personal identification code of a particular account holder;

(d) The identities of particular racing associations on which the account holder is wagering or has wagered; and

(e) Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the advance deposit account wagering licensee that would identify the account holder to anyone other than the commission or the advance deposit account wagering licensee.

(8) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, or estate.

(9) "Kentucky resident" is defined by KRS 230.210(12).

(10) "Nominal change in ownership" is defined by 811 KAR 2:140, Section 1(1).

(11) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(12) "Principal" means any of the following individuals associated with a partnership, trust association, limited liability company, or corporation:

(a) The chairman and all members of the board of directors of a corporation;

(b) All partners of a partnership and all participating members of a limited liability company;

(c) All trustees and trust beneficiaries of an association;

(d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;

(e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and

(f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

(13) "Substantial change in ownership" is defined by 811 KAR 2:140, Section 1(4).

(14) "Telephone account wagering" is defined by KRS 230.210(19).

(15) "Totalizator" or "Totalizator system" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

Section 2. License Required to Conduct Advance Deposit Account Wagering. (1) New license applications. Any individual, person, or entity, other than a licensed association engaged in telephone account wagering as defined in KRS 230.210(19) and addressed in KRS 230.378 and KRS 230.379, that offers advance deposit account wagering to Kentucky residents shall apply to the commission for a license pursuant to KRS 230.260(2). Deadlines for new license applications shall be as follows:

(a) Any individual, person, or entity that offered advanced deposit account wagering to Kentucky residents prior to {EFFECTIVE DATE OF REG}, shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before {60 DAYS AFTER EFFECTIVE DATE}. Between the time that the license application is submitted and the commission renders a decision, the individual, person, or entity may continue to operate. The commission shall render a decision within ninety (90) days of receipt of a completed license application. The license shall be effective upon approval of the commission.

(b) Any other individual, person, or entity shall apply to the commission for a license by submitting a completed "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering." The license shall be effective, and the advance deposit account wagering licensee may begin operations, upon approval of the commission.

(2) Renewal applications. A license to conduct advance deposit account wagering shall be renewed annually in accordance with this administrative regulation. A renewal application shall be submitted on the form "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering" on or before September 1 of the preceding year. The commission shall render a decision on the application on or before December 15 of the preceding year. If approved, a renewal license shall be effective January 1.

(3) The applicant shall provide all information required to be disclosed in the application. If an applicant is unable, despite best efforts, to provide any of the information required, the applicant shall fully explain and document its reasons to the satisfaction of the commission, and shall provide the information promptly upon being able to do so.

Section 3. Licensing Costs and Fees. (1) In accordance with KRS 230.260(6), the applicant shall pay all costs incurred by the commission in reviewing an application for an initial license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. As an initial payment for these costs, the applicant shall submit, along with a license application, a cashier's check or certified check payable to the commission in the amount of five thousand dollars (\$5,000). Any portion of the payment not required to complete the investigation shall be refunded to the applicant within twenty (20) days of the granting, withdrawal, or rejection of the initial license application. To the extent additional costs will be necessary, the applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt

of the request. Failure to submit an additional requested payment shall result in suspension of the processing of the license application and may result in denial of the license.

(2) An applicant for a renewal license shall pay all reasonable costs incurred by the commission in reviewing a renewal license, including legal and investigative costs and the cost of other necessary outside professionals and consultants. The applicant shall submit a cashier's check or certified check payable to the commission in an amount reasonably requested by the commission within ten (10) days of receipt of request. Failure to submit the payment shall result in suspension of the processing of renewing the license and may result in denial of the license.

(3) The commission may waive the costs contained in subsections (1) and (2) of this section in part or completely if the applicant has undergone a certification process or other investigative review by a commission-approved industry or regulatory body.

(4) An annual license fee of one thousand dollars (\$1,000) shall be payable to the commission upon issuance of the original license and thereafter, if a renewal license is granted, on or before January 1 of each year. A license shall not be issued until receipt of the license fee each year. The commission shall track the additional costs required to implement and enforce this administrative regulation and amend the annual fee in accordance with KRS Chapter 13A if necessary to recoup its regulatory costs, except the annual license fee shall not exceed ten thousand dollars (\$10,000), as provided in KRS 230.260(2).

Section 4. License Application Procedures. (1) An application for a license shall be in the form and manner prescribed by the commission in accordance with this administrative regulation. The commission may deny a license to any applicant that provides false or misleading information on or omits material information from the application. The application shall include:

- (a) The applicant's legal name;
- (b) The location of the applicant's principal office;
- (c) The name, address, and date of birth of each principal with a five percent (5%) or greater share of ownership or beneficial interest in the applicant;
- (d) Audited financial statements for the last three (3) years or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts;
- (e) A detailed plan of how the advance deposit account wagering system will operate. The commission may require changes in the proposed plan of operations as a condition of granting a license. There shall not be subsequent material changes in the plan of operations unless ordered by the commission or until approved by the commission after receiving a written request;
- (f) A list of all personnel processing wagers on races made by Kentucky residents. This list shall be kept current and be provided to the commission upon request; and
- (g) Copies of all documents described and required pursuant to the "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering."

(2) In addition to the application requirements contained in subsection (1) of this section, the commission may require:

- (a) A Type II SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants, or other independent report in a form acceptable to the commission, completed within the preceding twelve (12) months and other pertinent information as required by the commission to evaluate the applicant's control objectives, control activities, and control processes. The commission may require that a SAS 70 report, or replacement reports as approved from time to time by the Auditing Standards Board of the American Institute of Certified Public Accountants or other in-

dependent report in a form acceptable to the commission, be conducted annually in order to receive a renewal license; and

(b) A bond from a surety company admitted in the Commonwealth of Kentucky or other form of financial security such as an irrevocable letter of credit in favor of the Commonwealth of Kentucky in an amount not to exceed five hundred thousand dollars (\$500,000) depending upon the financial stability of the applicant, as demonstrated in the applicant's audited financial statements or, if the applicant does not have audited financial statements, financial and other pertinent information as required by the commission to determine that the applicant is financially capable of operating as a going concern and protecting accounts. The bond or letter of credit shall, if necessary, be used to:

1. Comply with and perform the provisions and undertakings of the advance deposit account wagering licensee set forth in the application as finally approved by the commission;
2. Discharge the licensee's financial obligations to account holders who are Kentucky residents;
3. Discharge payment of all taxes and expenses due by the licensee to the Commonwealth; and
4. Discharge the licensee's financial obligations to any racing association or simulcast facility licensed by the commission.

(3) In reviewing an application, the commission may consider any information, data, reports, findings, or other factors available that it considers important or relevant to its determination of whether the applicant is qualified to hold a license, including the following:

- (a) The integrity of the applicant and its principals, including:
 1. Whether the applicant or its principals is unsuitable pursuant to KRS 230.280(2)(f);
 2. Whether the applicant or its principals has been a party to litigation over business practices, disciplinary actions over a business license, or refusal to renew a license;
 3. Whether the applicant or its principals has been a party to proceedings in which unfair labor practices, discrimination, or violation of government regulations pertaining to racing or gaming laws was an issue, or bankruptcy proceedings;
 4. Whether the applicant or its principals has failed to satisfy judgments, orders, or decrees; and
 5. Whether the applicant or its principals has been delinquent in filing tax reports or remitting taxes;
- (b) The quality of physical facilities and equipment;
- (c) The financial ability of the applicant to conduct advance deposit account wagering;
- (d) The protections provided to safeguard accounts, including a certification from the licensee's chief financial officer that account funds will not be comingled with other funds as required in Section 7(6) of this administrative regulation;
- (e) The management ability of the applicant and its principals;
- (f) Compliance of the applicant with applicable statutes, charters, ordinances, and administrative regulations;
- (g) The efforts of the applicant to promote, develop, and improve the horse racing industry in the Commonwealth;
- (h) The efforts of the applicant to safeguard and promote the integrity of pari-mutuel wagering in the Commonwealth; and
- (i) The economic impact of the applicant upon the Commonwealth.

Section 5. Oral Presentation by Applicant. (1) The commission may require an applicant to make an oral presentation prior to its ruling in order to clarify or otherwise respond to questions concerning the application as a condition to the issuance or renewal of a license.

(a) The presentation shall be limited to the information contained in the applicant's application and any supplemental information relevant to the commission's determination of the applicant's suitability.

(b) The admission as evidence of the supplemental information shall be subject to the discretion of the commission.

(2) If the commission deems an applicant's application incomplete and does not accept it for filing, the applicant shall not be entitled to make an oral presentation.

Section 6. Additional Information. The commission may request additional information from an applicant if the additional information would assist the commission in deciding whether to issue or renew a license, including:

(1) Copies of any documents used by the applicant in preparing the application; and

(2) A list of all contracts between the applicant and third parties related to operations. The commission may review the contracts any time upon request.

Section 7. Operations. (1) Before doing business in Kentucky, the licensee shall be qualified to do business in Kentucky.

(2) A licensee shall submit a copy of any documents required to be filed with the Kentucky Department of Revenue and any documents related to an audit or investigation by any local, state, or federal regulatory agency contemporaneously to the commission.

(3) In addition to the information the commission may request under this or any other applicable administrative regulation or statute, the commission may require the licensee to remit contemporaneously to the commission a copy of any documents required to be filed with any local, state, or federal regulatory agency.

(4) A licensee shall submit quarterly reports to the commission providing amounts wagered by Kentucky residents and amounts wagered on Kentucky races as required by KRS 230.260(2).

(5) A licensee shall enter into an agreement with each licensed racing association in the Commonwealth on whose races the licensee offers advance deposit account wagering regarding payment of host fees and any other applicable fees, costs, or payments of any kind to be paid to the licensed association. The licensed racing association and the applicable horsemen's organization shall negotiate a separate agreement for contributions to the purse account generated by advanced deposit account wagering.

(6) A licensee shall not commingle account funds with other funds.

(7) A licensee that does not have audited financial statements for the last three (3) years as referenced in Section 4(1)(d) of this administrative regulation shall provide quarterly financial statements to the commission for the first calendar year of operation.

(8) A licensee shall use and communicate pari-mutuel wagers to a totalizator system licensed by the commission.

(9) A licensee shall operate and communicate with the totalizator system in such a way as not to provide or facilitate a wagering advantage based on access to information and processing of wagers by account holders relative to persons who wager at licensed associations or simulcast facilities.

(10) All personnel processing wagers made by Kentucky residents shall be licensed in the jurisdiction where they are located. If an individual is located in a jurisdiction that is not a racing jurisdiction or that does not require a license, that individual shall be licensed in Kentucky.

(11) Accounts shall only be accepted in the name of an individual and shall not be transferable. Only individuals who have established accounts with a licensee may wager through a licensee.

(12) Each account holder shall provide personal information as the licensee and the commission require, including, but not limited to:

- (a) Name;
- (b) Principal residence address;
- (c) Telephone number;
- (d) Social Security number;
- (e) Date of birth; and
- (f) Other information necessary for account administration.

(13) The information supplied by the account holder shall be verified by the licensee using means acceptable to the commission.

(14) The licensee shall provide each account holder a secure personal identification code and password to be used by the account holder to confirm the validity of every account transaction.

(15) An employee or agent of the licensee shall not disclose any confidential information except:

- (a) To the commission;
- (b) To the account holder as required by this administrative regulation;
- (c) To the licensee and its affiliates;
- (d) To the licensed association as required by the agreement between the licensee and the association; and
- (e) As otherwise required by law.

(16) The licensee shall provide each account holder a copy of account holder rules/terms of agreement and other information and materials that are pertinent to the operation of the account.

(17) The licensee may refuse to establish an account if it is found that any of the information supplied is false or incomplete or for any other reason the licensee deems sufficient.

(18) Each account shall be administered in accordance with the account holder rules/terms of agreement provided to account holders, including, but not limited to:

- (a) Placing of wagers;
- (b) Deposits to accounts;
- (c) Credits to accounts;
- (d) Debits to accounts;
- (e) Refunds to accounts;
- (f) Withdrawals from accounts;
- (g) Minimum deposit requirements;
- (h) Fees per wager; and
- (i) Rebates.

(19) Each licensee shall have protocols in place and shall publicize to its account holders when its wagers are excluded from a host track's wagering pool. These protocols shall include an immediate electronic mail message to affected account holders and immediate posting on the licensee's website.

(20) A licensee shall maintain complete records of the application and the opening of an account for the life of the account plus two (2) additional years. A licensee shall also maintain complete records of the closing of an account for two (2) years after closing. These records shall be provided to the commission upon request.

(21) A licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for two (2) years. These records shall be provided to the commission upon request.

(22) All wagering conversations, transactions, or other wagering communications, verbal or

electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of the communications shall be kept by the licensee for a period of two (2) years. These tapes and other records shall be made available to the commission upon request.

(23) The recording of the confirmation of the transaction, as reflected in the voice or other data recording, shall be deemed to be the actual wager regardless of what was recorded by the totalizator system.

(24) A licensee shall not accept wagers if its recording system is not operable.

(25) The commission may monitor the equipment and staff and review the records of a licensee and any of the transactions conducted by the licensee with regards to wagers made by Kentucky residents.

(26) A licensee may suspend or close any account for violation of its account holder rules/terms of agreement, or any other reason it deems sufficient, if it returns to the account holder all monies then on deposit within seven (7) calendar days.

Section 8. Transfers of Licenses. (1) A license issued under this administrative regulation shall not be transferable or assignable.

(2) A substantial change in ownership in a licensee shall result in termination of the license unless prior written approval has been obtained from the commission. Any request for approval of a substantial change in ownership shall be made on the form "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11. Upon receipt of all required information, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership.

(3) Notice of a nominal change in ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change in ownership will be based.

(4) For purposes of subsection (3) of this section, notice is not required for:

(a) A nominal change in ownership if the licensee is a publicly traded corporation; (b) The transfer of an ownership interest in an association, whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who shall hold the voting securities of the publicly traded corporation for investment purposes only; or

(c) A debt transaction of a publicly traded corporation, unless the transaction results in the pledge or encumbrance of the assets or any portion of the assets of the association.

(5) Any attempt to effect a substantial change in ownership under this section not in writing shall be considered void by the commission.

Section 9. Duration of License. A license issued under this administrative regulation shall be valid for the calendar year for which it is issued.

Section 10. Penalties and Enforcement. (1) The commission shall have all of the rights, powers, and remedies provided for in KRS Chapter 230, KAR Title 810, and KAR Title 811 to ensure compliance with this administrative regulation, including, but not limited to, revocation, suspension, or modification of a license and the imposition of fines.

(2) Additionally, with respect to any individual, person, or entity that offers advanced deposit account wagering to Kentucky residents without a license issued by the commission, the commission may take the measures it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal penalties.

Section 11. Incorporation by Reference. (1) The following material is incorporated by refer-

ence:

(a) "Initial/Renewal License Application to Conduct Advance Deposit Account Wagering," KHRC 145-01, 06/11; and

(b) "Advance Deposit Account Wagering Change of Control Form," KHRC 145-02, 06/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. [http://](http://www.khrc.ky.gov)

(3) This material may also be obtained at the commission's Web site, www.khrc.ky.gov. (38 Ky.R. 189; Am. 780; eff. 11-4-2011.)